IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 1094 of 2005

IN

CHAMBER SUMMONS NO. 1759 OF 2003

IN

SUIT NO.3086 OF 2003

DSQ Holdings Limited & ors. .. Appellants

versus

Infrastructure Leasing & Financial Services Limited .. Respondents

...

Mr.P.K. Samdani i/b Ms.Hemani Jhariya for the appellants.

Mr.Virag Tulzapurkar, a/w Mr.V.R. Dhond i/b M/s.Negandhi Shah & Himaytullah for the respondents.

CORAM : R.M. LODHA AND

D.G. KARNIK, JJ

DATED : 5th December 2005.

P.C.:

Heard.

2. The original defendants are in appeal aggrieved by the order passed by the learned Chamber Judge rejecting their application for revocation of leave that was granted to the plaintiffs earlier. The respondent (original plaintiff) filed the suit inter alia for the following reliefs:-

> (a) that this Hon'ble Court be pleased to declare that there is now due and payable by Defendant no.1 and 2 jointly and/or severally to the Plaintiffs an aggregate sum of Rs.3,72,87,086/- as per Particulars of Claim being Exhibit "R" hereto together with further interest on the said sum @ 15.75% p.a. and penal interest @ 2% p.a. in respect of the second loan from the date of the suit till payment and/or realisation.
>
> (b) that the Defendant Nos.1 and 2 jointly and/or severally be ordered and decreed to pay to the Plaintiffs an aggregate sum of Rs.3,72,87,086/- as per the Particulars of Claim being Exhibit "R" hereto together with further interest on the said sum @ 15.75% p.a. and penal interest @ 2% p.a. in respect of the first loan and @ 15.50% p.a. and penal interest @ 2% p.a. in respect of the second loan from the date hereof till payment and/or realization thereof;
>
> (c) that this Hon'ble Court be pleased to declare that the amounts due to the

> Plaintiffs as aforesaid are secured by valid, subsisting and binding equitable mortgage of the properties of the Defendant Nos.3 to 5 herein as set out in Exhibits "M-1" to "M-3" herein;

3. Leave under clause XII of the Letters Patent was obtained by the plaintiffs. The defendants, as noticed above, took out the Chamber Summons for revocation of leave.

4. It is true that the mortgage properties are situated outside the jurisdiction of the Court. It is also true that the defendants reside/carry on business outside the jurisdiction of this Court. According to the plaintiffs, the part of the cause of action arose within the jurisdiction of the Court as the part payment towards debt was made by the defendants at Mumbai i.e. within the jurisdiction of this Court.

5. Mr.P.K. Samdani, the learned counsel for the appellant urged that in the suit by mortgagee to enforce the mortgage is not a suit for land. None of the defendants reside/carry on business within the jurisdiction of this Court and therefore, the leave could not have been granted under clause XII and ought to be revoked. He referred to few

paragraphs of the Full Bench Judgement of this Court in the case of Hatimbhai Hassanally Vs. Framroz Eduljee Dinshaw reported in AIR 1927 Bombay 278.

6. A careful reading of the majority judgement in the case of Hatimbhai Hassanally clearly shows that a suit by mortgagee to enforce the mortgage by sale can be maintained under clause XII of the Letters Patent even where the mortgage property is situated wholly outside the limit of Ordinary Original Civil Jurisdiction of this Court and the defendants do not dwell or carry on business or personally work for gain within the jurisdiction of this Court, if the cause of action has arisen only within the limits of this Court or where part of cause of action has arisen within the jurisdiction of this Court and the leave is obtained. The plaintiffs clearly averred in the plaint that part payment towards the outstanding amount has been made by the defendants at Mumbai. Similar statement finds place in the leave application filed under clause XII of the Letters Patent. Thus, in the plaint as well as the leave application, the factum of part payment having been made by the defendants at Mumbai is clearly pleaded. The Supreme Court in

the case of A.B.C. Laminart Pvt. Ltd. & Anr. Vs. A.P. Agencies, Salem, reported in AIR 1989 Supreme Court 1239 held thus :

> "In the matter of a contract there may arise causes of action of various kinds. In a suit for damages for breach of contract the cause of action consists of the making of the contract, and of its breach, so that the suit may be filed either at the place where the contract was made or at the place where it should have been performed and the breach occurred. The making of the contract is part of the cause of action. A suit on a contract, therefore, can be filed at the place where it was made. The determination of the place where the contract was made is part of the law of contract. But making of an offer on a particular place does not form cause of action in a suit for damages for breach of contract. Ordinarily, acceptance of an offer and its intimation result in a contract and hence a suit can be filed in a court within whose jurisdiction. the acceptance was communicated. The performance of a contract is part of cause of action and a suit in respect of the breach can always be filed at the place where the contract should have (been) performed or its performance completed. If the contract is to be performed at the place where it is made, the suit on the contract is to be filed there and nowhere else. In suits for agency actions the cause of action arises at the place where the contract of agency was made or the place where actions are to be rendered and payment is to be made by the agent. Part of cause of action arises where money is expressly or impliedly payable under a contract. In cases of repudiation of a contract, the

> place where repudiation is received is the place where the suit would lie. If a contract is pleaded as part of the cause of action giving jurisdiction to the Court where the suit is filed and that contract is found to be invalid, such part of cause of the action disappears. The above are some of the connecting factors.

7. The legal position admits of no doubt that part of cause of action arises where money is expressly or impliedly payable under the contract. In the light of the averments mae in paragraph 23 of the plaint and the legal position above-noted, it is clear that the part of cause of action has arisen within the jurisdiction of this Court. In the circumstances, refusal by the learned Chamber Judge to revoke the leave cannot be said to suffer from any infirmity.

8. Appeal is dismissed in limine.

(R.M. LODHA, J)

(D.G. KARNIK, J)